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Case No.: 2:11-cv-00650-RLH-CWH

ORDER

(Motion to Dismiss—#11)

Defendants.

BACKGROUND

AO 72
(Rev. 8/82)

1 and talked to an unnamed friend, who called the police and told them Barren had acted violently
 2 towards Bush. The Defendant Officers arrived on the scene and arrested Barren despite no visible
 3 signs of illegality, relying solely on Bush's friend's phone call. Barren now brings this action
 4 under § 1983 alleging violations under the 4th and 14th Amendments to the United States
 5 Constitution. Now before the Court is the Defendant Officers' motion to dismiss. For the reasons
 6 discussed below, the Court grants the motion.

7 DISCUSSION

8 I. Legal Standard

9 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
 10 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short
 11 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
 12 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require
 13 detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic
 14 recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)
 15 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise
 16 above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a
 17 complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its
 18 face." *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

19 In *Iqbal*, the Supreme Court recently clarified the two-step approach district courts
 20 are to apply when considering motions to dismiss. First, a district court must accept as true all
 21 well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the
 22 assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only
 23 by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider
 24 whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A
 25 claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw
 26 a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where

1 the complaint does not permit the court to infer more than the mere possibility of misconduct, the
 2 complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal
 3 quotation marks omitted). When the claims in a complaint have not crossed the line from
 4 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

5 The Court also notes the well-established rule that *pro se* complaints are subject to
 6 “less stringent standards than formal pleadings drafted by lawyers” and should be “liberally
 7 construed.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007). This is particularly true in civil
 8 rights cases. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988)
 9 (holding that courts must afford *pro se* plaintiffs “the benefit of any doubt”).

10 **II. Analysis**

11 Section 1983 provides a mechanism for the private enforcement of substantive
 12 rights conferred by the Constitution and federal statutes. *Graham v. Connor*, 490 U.S. 386,
 13 393–94 (1989). Section 1983 “‘is not itself a source of substantive rights,’ but merely provides ‘a
 14 method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271
 15 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). To state a claim under § 1983,
 16 a plaintiff “must allege the violation of a right secured by the Constitution and the laws of the
 17 United States, and must show that the alleged deprivation was committed by a person acting under
 18 color of law.” *West v. Atkins*, 487 U.S. 42, 48–49 (1988).

19 In this case Barren sues the Defendant Officers and District Attorney David Roger
 20 in their official capacities. Suing a government employee in his official capacity is the functional
 21 equivalent of suing the governmental entity itself and not the actual individual named. *See*
 22 *Brandon v. Holt*, 469 U.S. 464, 469–70 (1984); *Larez v. City of Los Angeles*, 946 F.2d 630, 646
 23 (9th Cir. 1991). To properly sue a government entity under § 1983, a plaintiff must allege that the
 24 constitutional deprivation of which he complains “was inflicted pursuant to an official policy or
 25 custom.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir 2001) (citing
 26 *Monell v. Dep’t. of Soc. Servs.*, 436 U.S. 658, 690–91 (1978). Here, however, Barren’s complaint

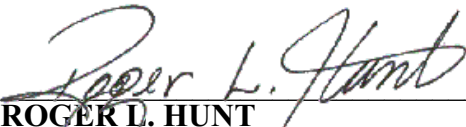
1 is devoid of any allegations of policies or customs. Without even the bare allegation of an
2 improper policy or practice at the Las Vegas Metropolitan Police Department (the Defendant
3 Officer's employer), Barren's first and second claims against the Defendant Officers in their
4 official capacity fail. Thus, the Court dismisses Barren's first and second claims without
5 prejudice.

6 **CONCLUSION**

7 Accordingly, and for good cause appearing,

8 IT IS HEREBY ORDERED that Defendants Robinson, Kent, and Shane's Motion
9 to Dismiss (#11) is GRANTED without prejudice.

10 Dated: January 19, 2012.

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13 **ROGER L. HUNT**
14 **United States District Judge**
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